

EXAMINER'S AMENDMENT

THE FINALITY SENT OUT ON 9/14/2010 IS HEREBY WITHDRAWN.

The 112, 2nd issue in the Office Action sent out on 9/14/2010 is overcome by claim amendments that is reflected in the following Examiner's Amendment, and see the Interview Summary attached for details.

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Mr. Rouget F. Henschel on 10/18/2010.

Election/Restrictions

Claims 1, 17-22, and 34 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), Claims 28-32, directed to the process of using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, Claims 28-32 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office Action mailed on 1/9/2008 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the

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rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The application has been amended as follows:

IN THE CLAIMS:

Claims 23, 26 and 27 have been cancelled.

Claim 1 has been amended to read as follows:

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An oral composition for stimulating thermogenesis comprising capsaicinoids in combination with a formulation base which is acceptable for oral administration, said formulation base consisting essentially of:

at least one vegetable and/or mineral oil selected from soya oil, sunflower oil, corn oil, olive oil, nut oil, and a liquid paraffin;

and lipophilic additives of:

a) approximately 5% by weight of beeswax based on the total weight of the composition;

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b) approximately 5% by weight of glycerol palmitostearate based on the total weight of the composition; and

c) approximately 0% to 10% by weight of a lipophilic additive selected from the group consisting of polyethylene glycol, candelilla wax, carnauba wax, polyethylene oxide wax, and petroleum wax,

wherein the composition is a dosage form chosen between soft or hard capsules.

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Claim 28 has been amended to read as follows:

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A method for stimulating thermogenesis comprising administering the composition as claimed in claim 1 to a subject in need thereof.

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Claim 31 has been amended to read as follows:

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The method as claimed in claim 28, for treating obesity, digestive problems, circulation problems, or hypercholesterolemia, or for reducing the appearance of cellulite.

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In Claim 32, at line 2, the term “gatroesophageal” has been deleted, and replaced with the term --gastroesophageal--.

Claims 1, 17-22, 28-32, and 34 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Qiuwen Mi/

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Primary Examiner, Art Unit 1655